the Court has regard to the opportunities of knowledge with respect to the facts to be proved which may be possessed by the parties respectively. That case, however, was one in which the *onus* of proving that the accused was an alien was expressly placed upon him by statute; and if and in so far as the remarks of the Court in that case were intended to apply generally to criminal cases, they are in our opinion *obiter* and in any case must be taken to have been over-ruled by *Woolmington v. Director of Public Prosecutions*[12].

It is a little difficult to understand why the Deputy Public Prosecutor found it necessary to make these long and involved submissions in a case which was in fact a very simple one, depending as it did substantially upon whether the evidence of Tan Bok Lee was or was not believed. Untenable propositions of law put before Assessors may well prejudice an accused if those submissions are not corrected by the learned Judge in his summing up and an unnecessary burden is thus cast upon the trial Judge when such submissions are made.

As we have already remarked the learned Judge in this case summed up the law correctly to the Assessors except upon the one point of whether the principal witness was an accomplice or not and as has already been pointed out he treated this witness on the same footing as an accomplice. We think, therefore, that the Assessors had all the relevant matters properly put before them. The result is that the conviction of the appellant upon the charge of consorting is quashed (no sentence was passed in respect of this charge) and the conviction upon the charge of carrying component parts of a firearm is upheld and the sentence confirmed.

Conviction Varied Accordingly.

PUBLIC PROSECUTOR v. LIM GEOK CHING & TAN YOW.

[Revisional Cr. Juris. (Pretheroe, J.) April 28, 1949]

[Malacca — Cr. Revision No. 1 of 1949]

Opium and Chandu Proclamation, Paragraph 17(1) — Forfeiture of lorry in which opium was found — Necessity of establishing some degree of complicity of owner.

The Petitioner, Lee Geok Chong in this revision was the owner of three motor lorries. On the 26th October, 1948, two of the Petitioner's employees were convicted of having in their possession (hidden in a lorry belonging to petitioner but in their charge) 8 slabs of opium. At that trial the Petitioner's lorry was forfeited. On appeal the conviction of the second defendant was quashed and the order regarding the forfeiture of the lorry was set aside and it was ordered that the owner (the present Petitioner) be given an opportunity to appear before the District Judge to show cause why the lorry should not be forfeited. In pursuance of this order the Petitioner appeared before the Judge, who confirmed the forfeiture.

Held, that in the case of a highly penal provision like that contained in paragraph 17 (1) of the Opium and Chandu Proclamation, it is necessary to establish some degree of complicity on the part of the owner of a vehicle before the forfeiture of the vehicle can be ordered.

Case referred to :—

(1) *Cheng Kee Huat and Another v. Public Prosecutor* (1948) M.L.J. 53.

CRIMINAL REVISION.

Bell for Petitioner.

Pretheroe, J. : — The petitioner in this revision is the owner of three motor lorries. On the 26th October, 1948, two of petitioner's employees were convicted of having in their possession (hidden in a lorry belonging to petitioner but in their charge) eight slabs of opium. At that trial the learned trial Judge ordered that the petitioner's lorry be forfeited. On appeal the conviction of the second defendant was quashed and the order regarding the forfeiture of the lorry was set aside and it was ordered that the owner (the present petitioner) be given an opportunity to appear before the learned District Court Judge to show cause why the lorry should not be forfeited. In pursuance of this order the petitioner appeared before the Judge, whose title had in the meantime been changed to President of the Sessions Court, on the 2nd of February last and set forth his grounds. The learned President delivered a considered judgment on the 4th February confirming the forfeiture. In this revision the petitioner prays that this decision be reversed.

In his carefully prepared judgment the learned President stated his reasons for coming to the conclusion that the petitioner was not a completely innocent party in the matter as protested by petitioner himself. With great respect I find it difficult to follow the learned President's arguments on this one point. He states that he was unable to believe the petitioner's protestations of innocence partly because he himself constructed the bodywork of the lorry in question and he himself drove that lorry for about a month after such construction. But these facts alone do not prove knowledge of the petitioner because, according to the record, such construction must have taken place some two years previously and there is ample evidence that during that period the lorry was frequently in the sole control of the driver in such circumstances as to afford him ample opportunity if he so desired to sub-divide the tool boxes so that they afford hidden recesses.

The second reason advanced by the learned President for not accepting petitioner's innocence was that he was not satisfied that petitioner "never looked into the tool boxes". The learned President thus disagreed with the submission made by Counsel for petitioner that car owners do not normally inspect their tool boxes though apparently the question was never put to petitioner himself. But even if the learned President's decision on this point is correct it still does not go far enough in that it does not decide that petitioner inspected the tool boxes after they had been adapted to provide the secret compartments. As it appears probable that petitioner's employees obtained the opium during their last visit to Singapore, whether in Singapore or somewhere on the route is immaterial, it is at least a reasonable assumption that the tool boxes were adapted then for the express purpose of conveying the opium so obtained. In such case the petitioner would have no opportunity to inspect the boxes as the lorry was seized before it reached the end of the return journey from Singapore. In my opinion therefore there was no proof of petitioner's complicity either in the actual commission of the offence or in the adaptation of the tool boxes for the purpose of committing the offence. I agree with the decision of Russell J. in *Cheng Kee Huat and another v. Public Prosecutor*[1] that, in the case of a highly penal provision like that contained in paragraph 17(1) of the Opium and Chandu Proclamation, it is neecessary to establish some degree of complicity on the part of the owner of a vehicle before the forfeiture of the vehicle can be ordered.

I therefore direct that the order of the learned President confirming the forfeiture of the lorry be set aside and that the lorry registered as M 1067, and the subject matter of this reference, be returned to petitioner. I make no order as to costs.

Order of forfeiture set aside.

PUBLIC PROSECUTOR v. GOH AH MOI (f).

[Orig. Cr. Juris. (Pretheroe, J.), April 28, 1949]

[Malacca — Cr. App. No. 3 of 1949]

Common Gaming Houses Ordinance, S.S. Sec. 4 — Principles in assessing the quantum of punishment.

In this case the respondent was convicted on two charges viz:—

(a) assisting in carrying on a Chap Ji Kee lottery contrary to s. 4(c) of the Common Gaming Houses Ordinance; and

(b) assisting in carrying on a Wah Hoay lottery also contrary to the above-mentioned section.

The respondent was convicted on both charges and was fined $150/- on the first charge and $100/- on the second charge. The Public Prosecutor appealed against both these sentences on the ground that they were inadequate.

Held, that in the case of any conviction under s. 4 of the Ordinance the penalty imposed should be such that it will take away from the convicted offender the desire to offend in a similar manner again. Quite clearly a balance of income left in a promoter's pocket after payment of a fine will have precisely the opposite effect and for a Court to leave any such balance would be a wrong application of the accepted principles.

Case referred to:—

(1) *Public Prosecutor v. Sim Moh Ee* (1946) M.L.J. 88.

CRIMINAL APPEAL.

Good (D. P. P.) for the Appellant.

Respondent in person.

Pretheroe, J. : — The respondent in this appeal was convicted on two charges viz :—

(a) assisting in carrying on a Chap Ji Kee lottery contrary to section 4(c) of the Common Gaming Houses Ordinance; and

(b) assisting in carrying on a Wah Hoay lottery also contrary to the above-mentioned section.

She was convicted on both charges and was fined $150/-, or three months rigorous imprisonment in default of payment, on the first charge, and $100/-, or three months rigorous imprisonment in default of payment, on the second charge.

The Public Prosecutor appealed against both these penalties on the ground that they were inadequate and when arguing the appeal Mr. Good pointed out that the penalties for this offence as commonly imposed in the Settlement of Malacca were much smaller than those commonly imposed in the adjoining States. He agreed that the main object of this appeal was to secure a pronouncement regarding the penalty to be imposed in similar cases.

It is unnecessary for me to comment in general on the principles involved in assessing the quantum of punishment as they are fully considered in paragraph 363 *et seq.* in Part VII of volume 9 of Halsbury's Laws of England (Hailsham Edition). These principles were also considered by Laville J. in *Public Prosecutor v. Sim Moh Ee*[1].

When applying these principles to a conviction under the Common Gaming Houses Ordinance it must be borne in mind that the Legislature has drawn a sharp distinction between complicity in organising or conducting a lottery on the one hand and the mere participation in a lottery on the other hand. The maximum penalty prescribed for the former is a fine